Court No.3

Government Appeal no.2267 of 1976-old number
1884 of 2001-new number

State…….. Appellant

Versus

Mahendra Singh and other…… Respondents.

Hon'ble Irshad Hussain J.

The State has preferred this appeal against the order of acquittal-dated 5.6.1976 passed by the then Special Judicial Magistrate, Uttarkashi in criminal case no. 133 of 1976 u/s 26 of the Forest Act.

Written complaint was filed against the six accused with the allegations that they have indulged themselves in illegal felling of pine trees from reserved forest Badahat Range Maneri Block of district Uttarkashi on 19.12.1975 and they have fled away as they were unable to transport the cut threes from the scene of occurrence. The presence of the accused was verified on the spot by the forest department officials. The cognizance of the offence on the basis of the complaint was taken by the learned Magistrate and accused put in appearance in the case. On 5.6.1976 neither the complainant nor the counsel for the complainant was present in the Court of the Magistrate. It was also noticed that on two previous dates the counsel for the complainant was afforded opportunity and despite this, the said default was made on the adjourned date i.e. 5.6.1976. Considering the fact that none came forward to prosecute the case on behalf of the complainant, the learned Magistrate felt obliged to resort to the provisions of section 256 Cr.P.C. and dismissed the complaint thereby acquitting the accused for the offence u/s 26 of the Forest Act.

Heard the learned A.G.A. and Sri Lokendra Dobhal, counsel for the respondents.

The learned A.G.A. submitted that the learned Magistrate while passing the impugned order of acquittal in the absence of the complainant and his counsel failed to take into account that under the proviso to

section 256 Cr.P.C, the learned Magistrate was legally obliged to proceed with the case by dispensing with the personal attendance of the complainant and his counsel and instead of doing so the contrary order of dismissal of the complaint and the acquittal of the accused is not legally justified. On the other hand, it was urged by the learned counsel for the respondents accused that the complainant and his counsel had been afforded opportunity on the previous dates also but they did not care to remain present in the court on the date fixed i.e. 5.6.1976 and, therefore, the learned Magistrate has not alternative but to dismiss the complaint and acquit the accused u/s 256 Cr.P.C. Considering the facts and circumstances of the case, the submission of the learned counsel for the accused respondents appears forceful and there appears to be no illegality in passing the impugned order of dismissal of the complaint. Considering this, the appeal has no force and is liable to be dismissed.

From the record, it is evident that the forest wood recovered was permitted by the learned Magistrate to be sold by auction with a direction that the sale proceeds shall be deposited under proper head. Since the ownership of the wood was not claimed by the respondent accused, they are not entitled to claim withdrawal of the sale proceeds deposited after auction.

The appeal is dismissed accordingly.

(Irshad Hussain, J.)

August 6, 2002.
M.P.S.